NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Spurlino Materials, LLC and Coal, Ice, Building Material, Supply Drivers, Riggers, Heavy Haulers, Warehousemen and Helpers, and Local Union No. 716, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America. Cases 25–CA–30053, 25–CA–30054, 25–CA–30080, 25–CA–30104, 25–CA–30156, 25–CA–30179, and 25–CA–30362

August 9, 2010

## DECISION AND ORDER

## BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND HAYES

On March 31, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB No. 125. Thereafter, the General Counsel filed an application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 136 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 353 NLRB No. 125 (2009), which is incorporated herein by reference.<sup>3</sup>

Dated, Washington, D.C. August 9, 2010

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member
Brian E. Hayes,	Member

## (SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>&</sup>lt;sup>2</sup> Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

<sup>&</sup>lt;sup>3</sup> We find it unnecessary to rely on *Industrial Hard Chrome*, 352 NLRB 298 fn. 2 (2008), as cited at slip. op. 1 fn. 4 of the decision.

Member Hayes joins Member Schaumber in finding that Respondent untimely raised, and thus waived, an "economic exigency" argument. See 353 NLRB No. 125, slip op. at 1 fn. 3. Additionally, in adopting the judge's conclusion that the Respondent unlawfully suspended and subsequently discharged employee Gary Stevenson, Member Hayes agrees with the statements made by Member Schaumber regarding the relevance of "disproportionate" discipline and the well-established Board and judicial doctrine that the Board cannot simply substitute its business judgment for that of the employer.